

2005 APR 8 PM 1 15

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcase 86-10677
Case No. 39576) (Brewer)
)
) SPECIAL MASTER REPORT
)
_____)

Findings of Fact

On November 16, 2001, John W. Brewer filed his *Motion to Intervene Under the Provisions of Administrative Rule 1, §10.k* in subcase 86-10677 requesting an order allowing him “to intervene and present his defenses to those certain springs and fountain claims on behalf of the Nez Perce Tribe in reporting areas 19, 22, and 24.” Mr. Brewer alleged he is a claimant of water right 86-10677, also claimed by the Nez Perce Tribe (BIA Nos. 86-11372 & 86-11373 and NPT Nos. 86-11733 & 86-11734).

Since Mr. Brewer’s claim 86-10677 had not been reported and recommended by IDWR and therefore was not “ripe for objections,” former Presiding Judge Roger S. Burdick entered his *Order Docketing Motion in Consolidated Subcase 67-13701 & Order of Reference to Special Master Dolan* on November 26, 2001. On February 14, 2002, the Special Master entered an *Order Granting Motion to Intervene* granting Mr. Brewer’s *Motion to Intervene* in consolidated subcase 67-13701.

On September 21, 2004, IDWR filed its *Director’s Report for Irrigation and Other Uses, Reporting Areas 22, IDWR Basin 86*. The Director recommended 86-10677 to James and John Brewer, 2809 Albright Grade, Lewiston, Idaho, 83501, for .2 cfs from springs tributary to Clearwater River for year-round diversion to storage, domestic, stockwater, stockwater storage and stockwater from storage uses in Nez Perce County with a priority date of November 14, 1903, based on beneficial use.

No one timely objected to the Brewers' claim and the SRBA Court was prepared to enter an uncontested partial decree.¹ On February 24, 2005, Presiding Judge John M. Melanson entered an *Order of Reference Appointing Theodore R. Booth Special Master* in subcase 86-10677. However, that *Order* was rescinded on February 25, 2005, because the subcase had already been referred to Special Master Terrence A. Dolan, the claim being "interrelated" to consolidated subcase 86-10677 (United States and Nez Perce Tribe "springs or fountains" claims).

A status conference in consolidated subcase 67-13701 was held by telephone on April 7, 2005, to consider "whether the Brewers' uncontested claim 86-10677 should now be partially decreed." Vanessa Boyd Willard and Frank Wilson appeared for the United States; K. Heidi Gudgell and Steven C. Moore appeared for the Nez Perce Tribe; Steve W. Strack appeared for the State of Idaho; Travis L. Thompson appeared for Idaho Power Company and the "Federal Claims Coalition;" and Candice M. McHugh appeared for IDWR. The United States and the Nez Perce Tribe said they have no objection to 86-10677 being partially decreed and no other party opposed such action.

Conclusions of Law

James and John Brewer are entitled to a partial decree adjudicating a water right as recommended by IDWR and as described in the attached *Special Master Recommendation for Partial Decree for Water Right 86-10677*.

DATED April 8, 2005.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

¹ Uncontested claims reported in the September 21, 2004, Basin 86 *Director's Report for Irrigation and Other Uses* were partially decreed in February, 2005.

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 86-10677

2. 1

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
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In Re SRBA)
)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 86-10677

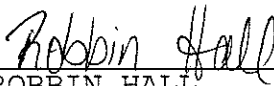
CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on April 08, 2005, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

JAMES BREWER
Represented by:
JAMES W GIVENS
BOX 875
LEWISTON, ID 83501
Phone: 208-746-2374

JOHN W BREWER
2809 ALBRIGHT GRADE
LEWISTON, ID 83501



ROBBIN HALL
Deputy Clerk

CERTIFICATE OF MAILING

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

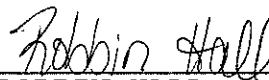
Water Right(s): 86-10677

On April 08, 2005, Special Master TERRENCE A. DOLAN
issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s)
pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party
to the adjudication including parties to the subcase, may file a Motion
to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate
in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION
shall constitute a waiver of the right to challenge it before the
Presiding Judge.

DATED April 08, 2005.



ROBBIN HALL
Deputy Clerk